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Cc: []
From: CN=David Powers/OU=R10/O=USEPA/C=US
Sent: Wed 9/28/2011 6:49:31 PM
Subject: Fw: URGENT: Review Requested of Oregon Forestry Program and Authorities for National 319 Study
[OR forestry blurbs for DP's review.docx](#)

Below are two possible edited versions to use for describing OR's regulatory authorities to control NPS pollution. The first edited version was provided by DEQ. The second edited version further below I developed based on the OR FPA 2000 rules and the July 2, 2010 State AG's opinion regarding DEQ's authority to address NPS on private and state forest lands. You could go with either version and be o.k. The DEQ version may better reflect where the State may end up via collaboration with ODF and forest landowners on implementation ready TMDLs. The second version accurately reflects the legal authority the AG opinion claims DEQ has for addressing NPS for forestry. I'd recommend taking out safe harbor regardless of which version you choose because it has ESA implications. Strike through and Red additions are used in both versions.

DEQ version

Blurb 1, in the Forestry section in our chapter on state regulatory authorities to control NPS pollution...

- Oregon's Forest Practices Act was enacted in 1971 and requires the Oregon Board of Forestry to establish BMPs and other rules to ensure that to the maximum extent practicable NPS pollution from non-federal forest operations does not impair achievement and maintenance of water quality standards and TMDL load allocations established by Oregon's Department of Environmental Quality (DEQ). These rules are developed and administered by the Oregon Department of Forestry (ODF). The Forest Practices Act requires that rules be updated and BMPs altered if necessary to meet water quality standards. As back-up authority, DEQ's Director can and will issue a TMDL as an enforceable order, and has the additional authority to issue as an enforceable order and a Water Quality Management Plan (WQMP) to implement any such TMDL. Under this construct, Oregon has committed to preparing "implementation-ready" TMDLs where forest practices have impaired water quality, starting with preparation of the Mid-Coast TMDL by 2012. Management strategies identified in a TMDL or a WQMP to achieve wasteload and load allocations in a TMDL will be implemented through water quality permits for those sources subject to permit requirements in ORS 468B.050. Nonpoint source load allocations will be implemented through ODF as the Designated Management Agency unless they decline that role by not requiring BMPs that will meet the load allocations. In this case, DEQ would work with TMDL stakeholders to develop implementation strategies, which could include safe harbor BMPs and or through other sector-specific or source-specific implementation plans for other sources. TMDLs and WQMPs will identify the sector and source-specific implementation plans required and the persons, including Designated Management Agencies, responsible for developing and revising those plans.

Blurb 2, in the Forestry section of our chapter on NPS programs and initiatives...

- Oregon's NPS program at the State's Department of Environmental Quality (DEQ) works with Oregon's Department of Forestry (ODF) under the terms of an MOU to evaluate whether current forest

practices rules comply with State water quality standards and TMDL load allocations. The primary focus of the Sufficiency Analysis was on temperature. In 2002, ODEQ and ODF co-authored a statewide sufficiency analysis focused on evaluating the Forest Practices Act effectiveness in protecting water quality. This report included monitoring recommendations, including the need to monitor effectiveness of riparian and forest road management practices. As a result, ODF is currently conducting the Riparian Function and Stream Temperature (RipStream) study to quantify the effects of current riparian management practices on private and State forest lands. Since 2009, DEQ has provided 319 grant funds to ODF to continue analysis of RipStream data. This study will be used to evaluate and revise riparian BMPs on private lands. Oregon DEQ is also committed to implementing enforceable TMDLs with "safe harbor BMPs" BMPs to control logging impacts. (See Chapter 3: Regulatory Authorities Addressing NPS Pollution for more information.)

----- Forwarded by David Powers/R10/USEPA/US on 09/27/2011 03:09 PM -----

From: Don Waye/DC/USEPA/US
 To: David Powers/R10/USEPA/US@EPA
 Cc: Steven Epting/DC/USEPA/US@EPA, Dov Weitman/DC/USEPA/US@EPA
 Date: 09/23/2011 04:16 PM
 Subject: URGENT: Review Requested of Oregon Forestry Program and Authorities for National 319 Study

Dave,

Dov Weitman has asked that you review a couple of blurbs we intend to include in our national 319 report. I'm not sure what your schedule is like next week, but if at all possible, we need feedback not later than next Wednesday, 9/28.

Blurb 1, in the Forestry section in our chapter on state regulatory authorities to control NPS pollution...

- Oregon's Forest Practices Act(FPA) ,was enacted in 1971 , and requires the Oregon Board of Forestry (BOF) to establish BMPs and other rules to ensure that to the maximum extent practicable NPS pollution from non-federal forest operations does not impair achievement and maintenance of water quality standards and TMDL load allocations established by Oregon's Department of Environmental Quality (DEQ). Under the FPA rules the BOF also conducts a triennial review of the effectiveness of BMPs and independently, or in response to a request from DEQ's executive commission (EQC), can initiate a forest practice rule change to ensure that BMPs are adjusted as necessary to meet water quality standards.

[These rules are developed and administered by the Oregon Department of Forestry (ODF).you could delete prior sentence but its accurate] The Forest Practices Act requires that rules be updated and BMPs altered if necessary to meet water quality standards. As back-up authority, DEQ's Director can and will issue a TMDL as an enforceable order, and has the additional authority to issue as an enforceable order a along with a Water Quality Management Plan (WQMP) to implement any such TMDL. In waters failing to meet DEQ established water quality standards, DEQ will develop and include BMPs or other control measures necessary to meet TMDL load allocations as part of the WQMP issued in conjunction with a TMDL. If the BOF fails to promulgate BMPs or other control measures that are as effective as DEQ's BMPs, DEQ has the authority to directly order compliance with the TMDL and WQMP via administrative order. Under this construct, Oregon has committed to preparing "implementation-ready" TMDLs where forest practices have impaired water quality, starting with preparation of the Mid-Coast TMDL by 2012/13. Management strategies identified in a TMDL and/or a WQMP to achieve wasteload and load allocations in a TMDL will be implemented through water quality permits for those sources subject to permit requirements in ORS 468B.050, safe harbor BMPs, and or through sector-specific or source-specific implementation plans for other sources. TMDLs and WQMPs will identify the sector and source-specific implementation plans required and the persons, including Designated Management Agencies, responsible for developing and revising those plans.

Blurb 2, in the Forestry section of our chapter on NPS programs and initiatives...

- Oregon's NPS program at the State's Department of Environmental Quality (DEQ) works with Oregon's Department of

Forestry (ODF) under the terms of an MOU to evaluate whether current forest practices rules comply with State water quality standards and TMDL load allocations. The primary focus of the Sufficiency Analysis was on temperature. In 2002, ODEQ and ODF co-authored a statewide sufficiency analysis focused on evaluating the Forest Practices Act effectiveness in protecting water quality. This report included monitoring recommendations, including the need to monitor effectiveness of riparian and forest road management practices. As a result, ODF is currently conducting the Riparian Function and Stream Temperature (RipStream) study to quantify the effects of current riparian management practices on private and State forest lands. Since 2009, DEQ has provided 319 grant funds to ODF to continue analysis of RipStream data. This study will be used to evaluate and revise riparian BMPs on private lands. Oregon DEQ is also committed to implementing enforceable TMDLs with "safe harbor BMPs" with required WQMP/implementation plans and BMPs to control logging impacts. (See Chapter 3: Regulatory Authorities Addressing NPS Pollution for more information.)

I have also included both of these blurbs in a Word file to facilitate "track changes" edits.

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